S.B.CIVIL WRIT PETITION NO.224/2004

Mahendra Kumar Khandelwal & Ors.
v.
State of Rajasthan & ors.

DATE OF ORDER :: 26th April, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Kamal Dave, for the petitioners.
Mr. Harish Purohit]
Mr. Rajesh Joshi] for the respondents.

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The Balotra Urban Cooperative Bank Ltd., Balotra (hereinafter referred to as "the bank") is a cooperative bank and the recruitment of its staff and their service conditions are regulated by Urban Cooperative Banks Employees Service Rules, 1987 (hereinafter referred to as "the Rules of 1987"). Rule 5 of the Rules of 1987 prescribes general conditions relating to appointment and sub-rule (ii) of it provides that minimum educational, professional and other qualifications including previous experience etc. where necessary in respect of each post shall be as indicated in the recruitment schedules for each post given in Appendix-A. The Appendix-A referred above reads as follows:-

> "Minimum and Maximum age for different category of staff shall be as fixed by the Registrar, Cooperative Societies, Rajasthan, Jaipur from time to time but for the Chief

> Executive, the maximum age will be 35 years having minimum qualification of graduate from a reconised University and also having seven years Banking experience. For officers, Commerce graduate, having minimum 55% agrigate marks and for clerical staff Commerce graduate and having 45% minimum agrigate marks, for Class IV servants eight class pass."

According to Appendix-A to be considered for appointment as clerk with the bank an aspirant must possess Bachelors Degree in Commerce with 45% minimum aggregate marks. An amendment was introduced in Appendix-A by the Registrar, Cooperative Societies, Rajasthan under an order dated 4.6.1997 and the eligibility to be considered for appointment as clerk with the bank was kept as graduation only for the members of Scheduled Castes and Scheduled Tribes.

Under the Rules of 1987 reservation while making appointments to various posts is also prescribed under sub-rule(xii) of Rule 5.

The petitioners, as a consequent to common selection proceedings, were employed as clerks with the bank in substantive capacity in the year 1992 and 1993. The respondent No.3, a member of Scheduled Caste though was not having 45% marks in B.Com Degree Course, was also permitted to face selection proceedings alongwith the petitioners. At first

instance, despite selection, appointment was not given to the respondent No.3 as he was lacking the eligibility i.e. of having 45% marks in Bachelors Degree of Commerce.

The Board of Directors of the bank in its meeting dated 30.6.1992 by adopting a resolution No.5 decided to employ the respondent No.3 as clerk by seeking an undertaking from him that in the event of any kind of objection in future with regard to his appointment he shall be liable for that. From perusal of resolution No.5 it appears that before adopting that certain guidelines were sought by the bank from the Registrar, Cooperative Societies but no response to that was given. The respondent No.3 in compliance to the resolution dated 30.6.1992 submitted an undertaking stating therein that in the event of any objection about his appointment he shall be liable for the same. An order of appointment accordingly was issued by the General Manager of the bank on 14.7.1992 giving appointment to the respondent No.3 as Clerk.

A seniority list of the Clerks working with the respondent bank was declared on 24.8.1998 wherein the petitioners except Sampat Raj (petitioner No.5) were shown senior than the respondent No.3. An another seniority list was declared by the respondent bank on 5.1.2000 wherein all the petitioners were sown senior than the respondent No.3 as the seniority of the

respondent No.3 was reckoned w.e.f. 25.3.1998, the date of the order under which his services were regularised. Relevant to note here that after amendment in the Appendix-A the Registrar, Cooperative Societies allowed the respondent bank to regularise service of the respondent No.3 w.e.f. 4.6.1997. The respondent No.3 after regularisation of his service submitted certain representations to the Registrar, Cooperative Societies to determine his seniority from the date of his initial appointment and on basis of his merit position in the selection proceedings those took place in the year 1992. The Registrar, Cooperative Societies accordingly under a communication dated 10.12.2003 directed the Managing Director of the respondent bank to determine seniority of the respondent No.3 as per his placement in the select list in order of merit. A direction was given to place the respondent No.3 in the seniority list at Serial No.3 after the names of Shri Gautam Singh and Shri Mishrilal.

Being aggrieved by the same, this petition for writ is preferred with a contention that appointment of the respondent No.3 as Clerk with the respondent bank was illegal as he was lacking qualification and that stood regularised only w.e.f. 4.7.1997, therefore, his seniority cannot be reckoned on basis of his placement in order of merit in the select list concerned.

A reply to the writ petition has been filed on behalf of the Registrar, Cooperative Societies as well as b the respondent No.3. The respondent bank has also filed a reply to the writ petition that mainly supports the stand of the petitioners. The stand of the Registrar, Cooperative Societies and of the respondent No.3 is that the appointment was given to him by a regular process of selection and, therefore, his seniority was required to be determined on basis of his position in the select list that was prepared in order of merit. Learned counsel for the respondent No.3 further emphasised that even if it is assumed that services of the respondent No.3 were regularised w.e.f. 4.7.1997 then too his seniority have to be determined from the date of his initial appointment as his regularisation shall relate back to the date on which the appointment was made and the entire service will have to be computed while reckoning seniority according to the length of continuous officiation. To substantiate the contention reliance is placed upon the judgment of Hon'ble Supreme Court in the case of L. Chandrakishore Singh v. State of Manipur and others, [(1999)8 SCC 287].

Heard counsel for the parties.

It is not in dispute that the petitioners as well as the respondent No.3 faced same selection

proceedings to be considered for appointment as clerk, however, at the relevant time the respondent No.3 was not possessing the qualification required for appointment as Clerk. Appointment of the respondent No.3 as a matter of fact was made dehore the Rules. Amendment in the Appendix-A was made on 4.7.1997 by giving a relaxation to the members of the Scheduled Castes and Scheduled Tribes with regard to having aggregate marks in educational qualification. The amendment so introduced is prospective in nature and, therefore, that does not validate appointment of the respondent No.3 which was essentially contrary to the Rules. Beside the fact that there is no provision under the Rules of 1987 for making appointment by way of regularisation. The Registrar, Cooperative Societies ordered for regularisation of services of the respondent No.3 but in any event that cannot be made for the period in which the respondent No.3 was not eligible to be recruited as clerk or in other words to hold the post of clerk. The respondent No.3, therefore, at the most could have been treated as a member of the cadre of clerks with the respondent bank from the date of his regularisation.

In the instant matter the regularisation cannot be related back from the date of initial appointment of the respondent No.3 as he was lacking eligibility. The reliance placed by counsel for the respondents upon the judgment of Hon'ble Supreme Court

in the case of L. Chandrakishore Singh (supra) is having no application in the present case as that was the case where the appointments were made on probation or on officiating basis followed by confirmation and no person was lacking eligibility. In the instant matter the appointment of the respondent No.3 prior to regularisation of the same was in contravention of the Rules and, therefore, the period pertaining to such an illegal appointment cannot be taken into consideration to reckon the seniority.

In view of whatever discussed above, this petition for writ deserves acceptance. Therefore, the same is allowed. The instructions given by the Registrar, Cooperative Societies to the Managing Director of the respondent bank to determine seniority of the respondent No.3 in order of merit in the select list and to place the respondent No.3 at Serial No.3 in the seniority list, is declared illegal and, therefore, the same is quashed.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.